

IN THE OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of:

No. 08F-RV-002-BCS

ASCENDING ROOTS SCHOLASTIC &  
ATHLETIC PREMISE, INC. (a non-profit  
corporation),

ADMINISTRATIVE  
LAW JUDGE DECISION

and

ASCENDING ROOTS SCHOLASTIC &  
ATHLETIC PREMISE (a charter school).

**HEARING:** July 16 and 17, 2008, beginning at 9:00 a.m. on both dates.

**APPEARANCES:** The Arizona State Board for Charter Schools appeared through Kim S. Anderson, Esq., Assistant Attorney General; Charter Holder Ascending Roots Scholastic & Athletic Premise, Inc. did not appear at the July 16, 2008 hearing; Charter Holder Ascending Roots Scholastic & Athletic Premise, Inc. appeared through Rita White, an Owner and Board Member Authorized to Represent the Non-profit Corporation, at the July 17, 2008 hearing.

**ADMINISTRATIVE LAW JUDGE:** Diane Mihalsky

The Arizona State Board for Charter Schools seeks to revoke the Charter of Ascending Roots Scholastic & Athletic Premise, Inc. pursuant to Arizona Revised Statutes ("A.R.S.") § 15-183(I) and (R). Based on the evidence of record, the Administrative Law Judge makes the following Findings of Fact, Conclusions of Law, and Recommended Order.

**FINDINGS OF FACT**

**BACKGROUND AND PROCEDURE**

1. On May 28, 2002, Ascending Roots Scholastic & Athletic Premise, Inc., a non-profit corporation organized under the laws of the State of Arizona ("Ascending Roots"), entered into a Charter Contract ("the Charter Contract") with the Arizona State Board for Charter Schools ("the Board") pursuant to which the Board issued a charter to

1 Ascending Roots ("the Charter") to operate Ascending Roots Scholastic & Athletic  
2 Premise as a charter school in Tempe, Arizona ("the School").<sup>1</sup> The School is currently  
3 authorized to serve students from kindergarten through eighth grade at 7310 N. 27<sup>th</sup>  
4 Ave., Phoenix, Arizona 85051.

5 2. The Charter Contract required Ascending Roots to comply with all state,  
6 federal, and local laws applicable to the operation of a charter school.

7 3. Kisha Spellman White and Rita White ("Ms. White") signed the Charter  
8 Contract as the authorized Charter Representatives for Ascending Roots. The address  
9 for both representatives identified on the Charter Contract was 14019 North 149<sup>th</sup> Drive,  
10 Surprise, Arizona 85379.

11 4. On March 10, 2008, the Board issued a Notice of Intent to Revoke Charter.  
12 The Board alleged that Ascending Roots had violated state and federal law and the  
13 Charter Contract in the following specific respects:

14 4.1 Ascending Roots had breached the Charter Contract and violated A.R.S. §  
15 15-183(C)(4) when it employed a substitute teacher/instructional aide who did not have  
16 a valid fingerprint clearance card (Notice of Intent to Revoke at Section II, ¶¶ 8-11);

17 4.2 Ascending Roots had breached the Charter Contract and violated A.R.S. §§  
18 15-183(E) and 15-914 when it failed to timely submit its annual financial statement audit  
19 and legal compliance questionnaire for the fiscal year ending June 30, 2007 (Section III,  
20 ¶¶ 12-17);

21 4.3 Ascending Roots had breached the Charter Contract and violated A.R.S. §  
22 15-901(A)(2)(b)(i) when it failed to provide an instructional program that met for a total  
23 of at least 1,068 hours for its seventh and eighth grade students (Section IV, ¶¶ 18-22);

24 4.4 Ascending Roots had breached the Charter Contract and violated A.R.S. §  
25 15-183(E)(3) when it failed to provide a curriculum aligned with the Arizona Academic  
26 Standards at each grade level (Section V, ¶¶ 23-26); and

27 4.5 Ascending Roots breached federal regulations and the Charter Contract  
28 regarding its No Child Left Behind Act (20 U.S.C. § 6301 *et seq.*) ("NCLB") funds when  
29 it failed to comply with the accountability and reporting requirements with respect to  
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<sup>1</sup> See the Board's Exhibit 1.

1 Cycle 6 monitoring for English Language Learner ("ELL") students for the 2005-2006  
2 school year (Section VI, ¶¶ 27-29, 31) and when it failed to submit its Cycle 1  
3 monitoring packet for the 2006-2007 school year (Section IV, ¶ 30).

4 5. On March 10, 2008, the Board also issued a Notice of Hearing on the matters  
5 alleged in the Notice of Intent to Revoke Charter, which hearing was set on July 15, 16,  
6 and 17, 2008 before the Office of Administrative Hearings, an independent state  
7 agency.

8 6. The Board sent copies of the Notice of Intent to Revoke Charter and Notice  
9 of Hearing to Kisha Spellman White at 14019 N. 149<sup>th</sup> Drive, Surprise, AZ 85379, to  
10 Rita White at 1041 W. Apollo, Tempe, AZ 85281, to Ascending Roots' statutory agent  
11 at 5201 S. 12<sup>th</sup> Ave., Phoenix, AZ 85040, and to the School at 7310 N. 27<sup>th</sup> Ave.,  
12 Phoenix, AZ 85051.

13 7. The Board alleged that, based on the violations set forth in the Notice of  
14 Intent to Revoke Charter, grounds existed to revoke Ascending Roots' Charter.

15 8. At the Board's attorney's request, on June 9, 2008, the Administrative Law  
16 Judge scheduled a prehearing conference for June 17, 2008 at 3:00 p.m. at the Office  
17 of Administrative Hearings. The Administrative Law Judge also informed Ascending  
18 Roots, Kisha Spellman White, and Rita White that, under Ariz. R. S. Ct. 31, appearing  
19 on behalf of a corporate party before the Office of Administrative Hearings was  
20 considered the practice of law, which could only be done by an active member of the  
21 Arizona State Bar. Under Ariz. R. S. Ct. 31(a)(2)(A)(3), however, a corporation could  
22 be represented by a full-time officer or employee if the corporation specifically  
23 authorized the representation, the representation was not the representative's primary  
24 duty, and the representative did not receive separate or additional compensation for the  
25 representation.

26 9. The Office of Administrative Hearings sent the order setting the prehearing  
27 conference to Rita White at the Tempe address, Kisha Spellman White at the Surprise  
28 address, and to Ascending Roots' statutory agent's address on S. 12<sup>th</sup> Ave. in Phoenix.

29 10. A prehearing conference was held on June 17, 2008. No one appeared on  
30 behalf of Ascending Roots. The Board's attorney informed the Administrative Law  
Judge that Ascending Roots had resolved the allegations in the Notice of Intent to

1 Revoke Charter concerning the employee who lacked a fingerprint clearance card and  
2 the financial audit. The Board therefore estimated that the hearing could be  
3 accomplished in a day.

4 11. On June 19, 2008, the Administrative Law Judge issued an order, vacating  
5 the first day of hearing and amending the Notice of Hearing to schedule a fair hearing  
6 on the merits on July 16, 2008 and, if necessary, on July 17, 2008.

7 12. The Office of Administrative Hearings sent a copy of the order amending  
8 the Notice of Hearing to Rita White at the Tempe address, Kisha Spellman White at the  
9 Surprise address, and to Ascending Roots' statutory agent's address on S. 12<sup>th</sup> Ave. in  
10 Phoenix.

11 13. On the day before the three-day hearing that had been originally scheduled,  
12 July 14, 2008, the Office of Administrative Hearings received a facsimile with the  
13 typewritten names of Kisha Spellman and Rita White, requesting "an extension  
14 because I had to leave town due to the fact that four of our underprivileged children  
15 were given free invitations to the JB International Classic to be scouted by several  
16 different college recruiters to potentially win athletic scholarships." The facsimile  
17 purportedly was sent from Atlanta and showed a "770" area code. However, because  
18 the facsimile did not bear the case number or matter name, it was not delivered  
19 immediately to the Administrative Law Judge

20 14. No one appeared at the Office of Administrative Hearings on behalf of  
21 Ascending Roots on July 15, 2008. No one contacted the Office of Administrative  
22 Hearings on Ascending Roots' behalf to ascertain the status of the motion for  
23 continuance.

24 15. A hearing was commenced on July 16, 2008. Rita White appeared and  
25 asked that the "meeting" be continued. The Administrative Law Judge indicated that  
26 she would not continue the hearing under A.A.C. R2-19-106(C) because the request  
27 was untimely and did not state good cause for having been made less than fifteen days  
28 before the scheduled hearing.

29 16. Because Ms. White could not say whether Ascending Roots had authorized  
30 her to represent it at the hearing, the Administrative Law Judge did not allow her to  
appear on its behalf at the July 16, 2008 hearing date.

1 17. At the start of the hearing, the Board's attorney stated that it withdrew the  
2 allegations in the Notice of Intent to Revoke Charter regarding the employee who  
3 lacked a fingerprint clearance card (Notice of Intent to Revoke at Section II, ¶¶ 8-11),  
4 Ascending Roots' failure to timely submit its annual financial statement audit and legal  
5 compliance questionnaire for the fiscal year ending June 30, 2007 (Section III, ¶¶ 12-  
6 17), and its failure to submit its Cycle 1 monitoring packet for the 2006-2007 school  
7 year (Section IV, ¶ 30).

8 18. On July 16, 2008, the Board presented the testimony of Andrea Leder,  
9 Governmental and Financial Services Manager for the Board, Karen LeGrand, a Title 1  
10 Specialist for the Arizona Department of Education ("ADE") in charge of monitoring the  
11 compliance with federal law of certain local educational agencies, or public and charter  
12 schools, who received federal funds, and Deanna Rowe, the Board's Executive  
13 Director, who investigated Ascending Roots compliance with its Charter Contract and  
14 Arizona statute. The Board also had admitted into evidence nineteen exhibits.

15 19. Sometime during the Board's presentation of its case-in-chief on July 16,  
16 2008, Ms. White left the hearing. After the Board's presentation of its case in chief, the  
17 Administrative Law Judge adjourned the hearing to allow Ascending Roots one last  
18 opportunity to present evidence even though many hours remained for the Board to  
19 make its closing argument.

20 20. On July 17, 2008, the hearing on the Board's Notice of Intent to Revoke  
21 Charter reconvened. Ms. White presented a document that stated that she had been  
22 authorized to represent Ascending Roots at the hearing, which was admitted into  
23 evidence at the Board's request,<sup>2</sup> and was allowed to appear on Ascending Roots'  
24 behalf at the remainder of the hearing. Ascending Roots presented the testimony of  
25 Cory O'Bannon, a former teacher who still volunteered at Ascending Roots, and  
26 Celeste A. Holliday, a teacher of English Language Arts at Ascending Roots, and had  
27 admitted into evidence four exhibits.

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29  
30 <sup>2</sup> See the Board's Ex. 20.

HEARING EVIDENCE

Instructional Program Hours

21. On February 1 and 4, 2008, Ms. Leder visited the School to perform a full compliance review. She was performing such reviews on all charter schools who had not yet submitted their 2006-2007 audits and compliance questionnaires, including Ascending Roots.<sup>3</sup>

22. On her February visits, Ms. Leder collected copies of Ascending Roots' class schedules and calendars for kindergarten and grades 5 through 8.<sup>4</sup> Ms. Leder testified at the hearing that the calendar did evidence the 180 days of instruction for seventh and eighth grade students required by A.R.S. § 15-341.01.

23. A.R.S. § 15-901(A)(2)(b)(i) required that, beginning in fiscal year 2005-2006, and each year thereafter, seventh and eighth grade students enrolled in a full-time program receive a total of at least 1,068 instructional hours.

24. According to the bell schedule that Ms. Leder obtained from Ascending Roots on February 1, 2008, seventh and eighth grade students would receive only 912.33 hours of instruction in the 2007-2008 school year, 155.67 hours less than the required 1,068 hours.<sup>5</sup>

25. On June 6, 2008, Kisha Spellman White furnished a revised bell schedule, which she said Ascending Roots had adopted on February 21, 2008 to address the shortfall.<sup>6</sup>

26. Ms. Leder recalculated Ascending Roots' instructional hours for seventh and eighth grade students, taking into account the revised bell schedule that allegedly became effective on February 21, 2008. Ms. Leder testified that she calculated additional hours provided under the revised bell schedule between February 21, 2008

<sup>3</sup> A.R.S. §§ 15-183(E)(6) and 15-914 require all charter schools to undergo an annual audit by an independent certified public accountant, which includes the completion of a legal compliance questionnaire. Audit contracts and completed audit reports for charter schools sponsored by the Board must be approved by the Board. After the Board's compliance review and within the 90 days following the Board's issuance of the Notice to Intent to Revoke Charter, Ascending Roots submitted an annual financial audit and completed legal compliance questionnaire, as the Board's attorney informed the Administrative Law Judge at the status conference and on the first day of hearing.

<sup>4</sup> See the Board's Ex. 2.

<sup>5</sup> Ms. Leder's calculations were admitted into evidence as the Board's Ex. 4.

<sup>6</sup> See the Board's Ex. 3.

1 and May 30, 2008, which was the last day of school according to the calendar. Under  
2 the revised bell schedule, Ascending Roots only provided 1,040.17 hours of instruction  
3 to its seventh and eighth grade students during the 2007-2008 school year, which was  
4 still 27.83 hours short of the 1,068 hours required by statute.

5 27. Ms. Leder testified that, as recently as the Friday before the scheduled  
6 hearing, Ascending Roots had provided revised bell schedules in an attempt to  
7 document that it was providing the required 1,068 hours of instruction to its seventh and  
8 eighth grade students.<sup>7</sup> According to Kisha Spellman-White's e-mail, the latest revised  
9 bell schedule was for the upcoming 2008-2009 school year, as well as for the 2007-  
10 2008 school year.<sup>8</sup>

11 28. Ms. Leder testified that, even if the most recent revised bell schedule were  
12 in effect during the 2007-2008 school year, calculations she performed revealed that  
13 the schedule makes Ascending Roots' shortfall greater by 11 hours, to 38.5 hours.  
14 Under any of the three schedules submitted, Ascending Roots had not provided 1,068  
15 hours of instruction to its seventh and eighth grade students during the 2007-2008  
16 school year.

17 29. On July 17, 2008, Mr. O'Bannon testified that he last worked for Ascending  
18 Roots as a regular, full-time teacher in 2005. However, he still volunteers frequently  
19 especially in physical education. He is also married to Kisha Spellman-White

20 30. Mr. O'Bannon testified that, under the bell schedule in place during the  
21 2007-2008 academic year, on Monday through Thursday, first period was between 8:15  
22 and 9:23 a.m.; second period was between 9:26 and 10:34 a.m.; third period was  
23 between 10:37 and 11:12 a.m.; lunch was between 11:12 and 11:42 a.m.; fourth period  
24 was between 11:45 a.m. and 12:53 p.m.; fifth period was between 12:56 and 2:04 p.m.;  
25 and sixth period was between 2:07 and 3:15 p.m.

26 31. Mr. O'Bannon testified that Ascending Roots also had a short-day schedule.  
27 Under that schedule, first period was between 8:15 and 9:14 a.m.; second period was  
28 between 9:17 and 10:14 a.m.; third period was between 10:17 and 11:15 a.m.; lunch  
29

30 <sup>7</sup> See the Board's Ex. 18.

<sup>8</sup> See the Board's Ex. 19.

1 was between 11:15 and 11:45 a.m.; fourth period was between 11:48 a.m. and 12:45  
2 p.m.; and fifth period was between 12:48 and 1:45 p.m.

3 32. Mr. O'Bannon testified that the short-day schedule was implemented on  
4 every other Friday or before major holidays (for example, the Wednesday before  
5 Christmas).

6 33. Mr. O'Bannon testified that his wife, Kisha Spellman-White, had gone to the  
7 Roosevelt and Washington school districts and had modeled Ascending Roots' bell  
8 schedule on those school districts' schedules. Instruction was provided for  
9 approximately six hours per day.

10 34. Mr. O'Bannon admitted that the bell schedule should have been posted  
11 during the 2007-2008 school year. Because he was not teaching full-time, he had no  
12 first-hand knowledge of which bell schedule had been used.

#### 13 NCLB Funds

14 35. Ms. LeGrand testified that, during the 2005-2006 school year, Ascending  
15 Roots received federal funds under NCLB for ELL students. The purpose of such  
16 funding was to close disparities in student educational achievement. ADE may monitor  
17 compliance with federal law by requiring information from public and charter schools  
18 that receive such funds.

19 36. ELL students are students who have not attained proficiency in the English  
20 language. ADE may require schools who receive NCLB federal funds for ELL students  
21 to submit a Cycle 6 Packet that describes the school's procedures for identifying ELL  
22 students and for assessing the ELL students' progress in the programs that the school  
23 has provided.

24 37. Ascending Roots submitted such a Cycle 6 Packet for the 2005-2006  
25 school year.

26 38. On March 22, 2006, ADE by letter notified Ascending Roots by letter that its  
27 Cycle 6 Packet had been received but that the packet was deficient. On or before April  
28 24, 2006, Ascending Roots was required to submit "procedures for identifying and  
29 reclassifying ELL students." To address this compliance item, Ascending Roots was  
30 required to take the following steps:



1 Submit the LEA<sup>9</sup> procedures for identifying ELL students  
2 which must include:

- 3 • The LEA must administer the Stanford English Language  
4 Proficiency (SELP) assessment to all PHLOTE<sup>10</sup>  
5 students within the required timeline which is 30 days  
6 from the beginning of school or 2 weeks from enrollment.
- 7 • A student who does not score proficient on the SELP is  
8 identified as an English Language Learner (ELL). The  
9 state approved Parental Notification and Consent Form  
10 must be sent to the parent/guardian within 30 days of  
11 testing.
- 12 • Kindergarten students were tested with the listening and  
speaking portions of the SELP. Grades 1-12 will be  
tested in all of the domains (listening, speaking, reading,  
and writing).

13 Submit the LEA procedures for reassessing and  
14 reclassifying ELL students:

- 15 • The LEA must administer the SELP annually to  
16 continuing ELL students. If a student scores proficient  
17 on the SELP, the LEA should reclassify the student as  
Fluent English Proficient (FEP).<sup>11</sup>

18 39. Ms. LeGrand testified that Ascending Roots did submit some additional  
19 information to ADE. However, it did not provide the information requested above.<sup>12</sup> On  
20 May 25, 2005, ADE sent another letter to Ascending Roots, again requesting that it  
21 provide the information described above but extending the deadline to June 20, 2006.<sup>13</sup>

22 40. Ms. LeGrand testified that Ascending Roots did not meet the extended  
23 deadline. On July 20, 2006, ADE again requested the same information first requested  
24 in the March 22, 2006 letter, and provided a new deadline of August 20, 2006.<sup>14</sup> Ms.

26 <sup>9</sup> The LEA is the Local Educational Agency, or school that received a subgrant from ADE of federal funds,  
27 which in this case was Ascending Roots.

28 <sup>10</sup> This acronym was not defined in the record.

29 <sup>11</sup> The Board's Ex. 12 (footnotes added).

30 <sup>12</sup> See the Board's Ex. 9. These materials appeared to relate to the Cycle 1 Packet, which was not in  
issue.

<sup>13</sup> See the Board's Ex. 13.

<sup>14</sup> See the Board's Ex. 14.

1 LeGrand testified that Ascending Roots did not submit any of the required documents  
2 by the third deadline.

3 41. On August 2, 2007, Ms. LeGrand sent Kisha Spellman-White an e-mail,  
4 again requesting the documents that described Ascending Roots' procedures for  
5 identifying and assessing the progress of ELL students.<sup>15</sup> Ms. LeGrand warned that  
6 Ascending Roots "may be in danger of not receiving funds for the 2007-08 school year."

7 42. Ms. LeGrand testified that, on July 11, 2008, Ascending Roots had  
8 submitted some additional documents. She reviewed all the documents. Ascending  
9 Roots' procedures were still not in compliance. In addition, the NCLB law had changed  
10 since 2006 and the most recent submissions did not consider the changes.<sup>16</sup>

11 43. Ms. LeGrand testified that Ascending Roots had submitted more documents  
12 on the day before the scheduled hearing. The documents had not yet been reviewed  
13 and no determination had been made whether the most recent documents submitted  
14 brought Ascending Roots into compliance with NCLB.

#### 15 Alignment with Arizona Academic Standards

16 44. A.R.S. § 15-183(E)(3) and the Charter Contract require that Ascending  
17 Roots provide a comprehensive program of instruction that was in alignment with the  
18 Academic Standards that have been adopted by ADE ("the Standards"). The  
19 Standards include content areas for each grade.

20 45. All public schools, including charter schools, are required to submit annual  
21 declarations to ADE affirming the adoption of a curriculum aligned with the Standards.

22 46. On October 20, 2006 and January 19, 2007, Ascending Roots submitted its  
23 Declaration of Curricular and Instructional Alignment to the Standards.<sup>17</sup> In that  
24 declaration, Ascending Roots avowed that it had adopted a curriculum that was aligned  
25 with the Standards for language arts (reading and writing), mathematics, and science  
26 for the 2006-2007 school year and that it had adopted an evaluation system that  
27 assessed whether its teachers were integrating the Standards into their instructional  
28 practices.

29 <sup>15</sup> See the Board's Ex. 15.

30 <sup>16</sup> See the Board's Ex. 17.

<sup>17</sup> See the Board's Ex. 6.

1 47. On November 26, 2007, Ascending Roots submitted its Declaration of  
2 Curricular and Instructional Alignment to the Standards.<sup>18</sup> In that declaration,  
3 Ascending Roots avowed that it had adopted a curriculum that was aligned with the  
4 Standards for language arts (reading and writing), mathematics, science, and the  
5 additional requirement of social studies for the 2007-2008 school year.

6 48. Ms. Rowe testified that ADE had added the social studies requirement for  
7 the 2007-2008 school year.

8 49. Ms. Rowe testified that, on February 7, 2008, she visited the School as part  
9 of the Board's review based on Ascending Roots' failure to file a timely audit report.  
10 The students were not in classrooms and instead were in a nearby field. Ms. Rowe was  
11 told that it was a "field day." Ms. Rowe testified that, when she returned to the School  
12 the next day, a significant number of regular teachers were absent, with their classes  
13 assigned to substitutes.

14 50. Ms. Rowe testified that, on February 8, 2008, she observed four  
15 classrooms: the first classroom was a combination of first and second grade students;  
16 the second classroom was a combination of third and fourth grade students; the third  
17 classroom was a combination of fifth and sixth grade students; and the fourth  
18 classroom was a combination of seventh and eighth grade students. The Charter  
19 Contract did not contemplate that classes would include multiple age and grade level  
20 students.

21 51. Ms. Rowe testified that she asked the teachers how they were  
22 differentiating students in the two grades included in their classes. Mr. Matthews, who  
23 was the science teacher, said that there was no differentiation. Ms. Smith, who taught  
24 English and social studies, said that books called SRA Social Studies were used for  
25 fifth and sixth grades, but the books were not comprehensive.

26 52. Ms. Rowe testified that, for seventh and eighth graders, she was shown a  
27 textbook entitled *The Civil War to the Present*. Ms. Rowe testified that the social  
28 studies Standards for seventh and eighth grade students included pre-Civil War  
29 concepts.

30 <sup>18</sup> See the Board's Ex. 5.

1 53. Ms. Rowe testified that the social studies Standards specifically required  
2 that eighth grade students be taught significant material from the American Revolution,  
3 including the various acts passed by the English Parliament that led to the revolution  
4 and various historical figures who performed significant roles in it. These materials  
5 were not included in the Standards for seventh grade students. There was no  
6 indication that eighth grade students at Ascending Roots were being taught the  
7 materials required by the Standards.

8 54. Ms. Rowe testified that ADE required the Standards to allow students to  
9 transfer to different schools in Arizona. Although the school may decide how to teach  
10 the materials, the content is set by the Standards.

11 55. Ms. Rowe testified that lesson plans and grade books were not readily  
12 available when she visited the School. One teacher had offered to go to her car to get  
13 the materials, but Ms. Rowe did not think the class should be left unattended. Another  
14 teacher said that there had been a break-in and most educational materials had been  
15 stolen.

16 56. Ms. Rowe testified that Ascending Roots was already under a 10%  
17 withholding of funds because it had failed to timely submit an audit. After she had  
18 presented the results of the compliance review, the Board determined to revoke  
19 Ascending Roots' charter.

20 57. Ms. Rowe testified that, after the compliance review, the Board required  
21 Ascending Roots to present a plan to bring it into compliance with applicable statutes.  
22 On April 24, 2008, on behalf of the Board, Ms. Rowe sent Ascending Roots a letter that  
23 informed Kisha Spellman White and Rita White that, to have the 10% withholding  
24 returned, in addition to submitting the required fiscal year 2007 annual financial  
25 statement audit and questionnaire, Ascending Roots must submit a corrective action  
26 plan to remedy, among other failures identified on the Notice of Intent to Revoke  
27 Charter, its failure to provide the required instructional hours for seventh and eighth  
28 grade students, its failure to provide a comprehensive program of instruction that was  
29  
30

1 aligned with the Standards, and its failure to document its compliance with ADE's  
2 requirements for the completion of the 2005-2006 Cycle 6 compliance monitoring.<sup>19</sup>

3 58. In response to the Board's enquiry about Ascending Root's failure to  
4 provide evidence of having provided a comprehensive program of instruction that was  
5 aligned with the Standards, on June 6, 2008, an Ascending Roots employee provided  
6 the Board with an approximately 160-page excerpt from the Odyssey Ware instructional  
7 program and informed the Board that Odyssey Ware was the program that it used.<sup>20</sup>

8 59. Ms. Rowe testified that Odyssey Ware was a computerized program of  
9 instruction. On her February 7 and 8, 2008 visit to the School, she had not seen any  
10 computers or computer labs that were available for student use and none of the  
11 instructors had told her that they used a computerized course of instruction. She had  
12 discussed Ascending Roots' resources with the teachers. One teacher had said that  
13 she used SRA, which was published by Prentice Hall. The math teacher said he was  
14 pulling his lessons off his own computer. Ms. Rowe did not observe any students using  
15 Odyssey Ware.

16 60. In response to Ascending Roots' claim that it used Odyssey Ware as its  
17 instructional program, on June 6, 2008, Ms. Rowe sent it a letter, acknowledging receipt  
18 of "[a] PDF document titled Science Scope and Sequence and another document titled  
19 Social Studies Scope and Sequence."<sup>21</sup> Ms. Rowe requested that Ascending  
20 Roots provide the following:

- 21 • Documentation to support the purchase and training for  
22 implementation of the Odyssey Ware products.
- 23 • Description of the facility used and scheduled use of the  
24 facility for the implementation of the computer based  
25 instructional program.
- 26 • The breakout of units, the time spent on each unit, a  
27 calendar of when each unit was taught, and evidence of  
28 the completion of unit summative assessments/  
29 experiments, etc.

30 <sup>19</sup> See the Board's Ex. 7.

<sup>20</sup> See the Board's Ex. 8.

<sup>21</sup> See the Board's Ex. 10.

1           61. On June 9, 2008, the employee at Ascending Roots who had identified  
2 Odyssey Ware as its instructional program responded to Ms. Rowe's letter in an e-mail,  
3 stating as follows:

4           A computer lab will be set up for use of the computers that  
5 will allow students to learn on at individualized pace. For  
6 students that struggle with content, a floating aide will assist  
7 that child on a small group of 4 or less. After students finish  
8 their training on-line, instructional will be reinforced by a  
9 teacher in a classroom setting to ensure each student  
10 comprehends what has been taught. Fridays will be used as  
11 a review over the week's content and for students individual  
12 one on ones with the teacher regarding their work, progress  
13 or problems.

14 Attached to the e-mail was a proposal to Ascending Roots dated February 13, 2008  
15 from Odyssey Ware that offered to provide 20 simultaneous licenses for Odyssey Ware  
16 and Premium Training, for a total cost of \$21,015.61, and approximately 73 pages of  
17 course details. The sales representative on the proposal was one Ryan Conrad, whose  
18 telephone number and e-mail address also were provided.<sup>22</sup>

19           62. Ms. Rowe testified that the June 9, 2008 e-mail did not indicate that  
20 Ascending Roots had used Odyssey Ware during the 2007-2008 school year. Instead,  
21 the e-mail stated that Ascending Roots was planning to use Odyssey Ware sometime in  
22 the future.

23           63. Ms. Rowe testified that, on June 11, 2008, she called Mr. Conrad, the sales  
24 representative whose name appeared on the proposal. Mr. Conrad told her that  
25 Ascending Roots had been in contact with him and was looking to implement Odyssey  
26 Ware during the coming school year. But Ascending Roots had not purchased anything  
27 yet and no training on Odyssey Ware had yet been provided to any of its teachers.

28           64. Ms. Rowe testified that the additional information that Ascending Roots  
29 provided did not indicate that it had provided a comprehensive course of instruction  
30 during the 2007-2008 school year that was in alignment with the Standards, especially  
for social studies and science. It had not provided any documentation to show what  
actually had been taught to students during the 2007-2008 school year, such as

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<sup>22</sup> See the Board's Ex. 11.

1 syllabuses or course curriculums, or whether students had actually completed the  
2 required units of instruction, such as written examinations or assignments.

3 65. Ms. Rowe testified that Ascending Roots had not shown that it provided  
4 instruction in science and social studies that was aligned to the Standards. Based on  
5 the Board's review of all information obtained from Ascending Roots and its teachers,  
6 Ms. Rowe testified that it did not appear to have provided a comprehensive program of  
7 instruction in science and social studies that was in alignment with the Standards.

8 66. Mr. O'Bannon testified that, while he had worked at Ascending Roots, it  
9 used Odyssey Ware to instruct fifth, sixth, and seventh grade students. Just before  
10 Christmas of 2007, in November or December 2007, Ascending Roots had been  
11 robbed. All the computers and some of the paper and furniture had been taken.

12 67. Mr. O'Bannon testified Ascending Roots had implemented the SRA system  
13 of instruction. From the way everyone was talking, SRA "seemed to meet the  
14 Standards." Odyssey Ware had been used to supplement SRA. It was easier for each  
15 student to have his or her own book.

16 68. Ms. Holliday testified that, in August 2007, she and all the other teachers  
17 had received training in the SRA system, which is published by McGraw Hill. There are  
18 SRAs in math, science, and social studies, which are organized by grade level.  
19 Ascending Roots had admitted into evidence a computer printout of a spec. sheet for  
20 the *SRA Skills Handbook: Using Science for Grade 1 through Grade 6*.<sup>23</sup>

21 69. Ms. Holliday also identified a "Brief overview Scope and Sequence for  
22 Social Studies."<sup>24</sup> The cover page stated that "[t]he proposed scope and sequence has  
23 its foundation, the existing K-12 social studies program for Ascending Roots Charter  
24 School and the recommendations of teachers from the June, 2007 Social Studies  
25 Summer Project." No specific social studies content for any grade level was described.  
26 The attached pages discussed scientific investigation, reasoning, and logic for fifth and  
27 sixth grade students.

28  
29  
30 <sup>23</sup> See Ascending Roots' Ex. B.

<sup>24</sup> See Ascending Roots' Ex. C.

1 70. Ascending Roots also had admitted into evidence Ms. Holliday's curriculum  
2 vitae, which showed her to be a well-qualified elementary and middle-school teacher of  
3 English, language arts, and English as a Second Language ("ESL").<sup>25</sup>

4 71. During the 2007-2008 school year, Ms. Holliday testified that she had  
5 started out teaching all subjects to first grade students at Ascending Roots. After about  
6 a month, however, Ms. Holliday started teaching English or language arts exclusively to  
7 all levels of students who attending Ascending Roots. She did not teach social studies  
8 or science, although she attempted to integrate social studies or science concepts in  
9 her instruction in English and language arts.

#### 10 CONCLUSIONS OF LAW

11 1. It appears that Kisha Spellman White and Ms. White, Ascending Roots'  
12 authorized Charter representatives, actually received the Board's Notice of Intent to  
13 Revoke Charter and Notice of Hearing and the Office of Administrative Hearings' orders  
14 setting the prehearing conference and amending the Notice of Hearing. Ascending  
15 Roots apparently did nothing to prepare for the hearing because its representatives  
16 assumed that it would be given unlimited opportunities to correct the deficiencies  
17 identified in the Notice of Intent to Revoke Charter. This apparent assumption is not  
18 supported by any communication from the Board or ADE in this record

19 2. In this matter, the Board bears the burden to prove, by a preponderance of  
20 the evidence, that grounds exist to sanction Ascending Roots' Charter and that  
21 revocation is an appropriate sanction by a preponderance of the evidence.<sup>26</sup>

22 3. "A preponderance of the evidence is such proof as convinces the trier of fact  
23 that the contention is more probably true than not."<sup>27</sup> A preponderance of the evidence is  
24 "[t]he greater weight of the evidence, not necessarily established by the greater number of  
25 witnesses testifying to a fact but by evidence that has the most convincing force; superior  
26 evidentiary weight that, though not sufficient to free the mind wholly from all reasonable  
27

28  
29 <sup>25</sup> See Ascending Roots' Ex. A.

30 <sup>26</sup> See A.R.S. § 15-183(I); A.R.S. § 41-1092.07(G)(1); A.A.C. R2-19-119; see also *Vazanno v. Superior Court*, 74 Ariz. 369, 372, 249 P.2d 837 (1952).

<sup>27</sup> Morris K. Udall, ARIZONA LAW OF EVIDENCE § 5 (1960).



doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other."<sup>28</sup>

4. Ascending Roots did not challenge the Ms. Leder's calculations of instructional hours provided to seventh and eighth grade students, but instead provided numerous revised bell schedules. Mr. O'Bannon was Ascending Roots' only witness on the issue of the number of instructional hours given seventh and eighth grade students during the 2007-2008 school year, but he had no first-hand knowledge of the actual bell schedule used.

5. After the Board's compliance review, Ascending Roots had sufficient time to increase its instructional hours to provide the 1084 hours that Arizona requires for seventh and eighth graders. The Board has established that it failed to do so.

6. The Board therefore has sustained its burden to prove, by a preponderance of the evidence, that Ascending Roots violated both statute and the Charter Contract by failing to provide an instructional program that met for a total of at least 1,068 hours for its seventh and eighth grade students.

7. Federal statute authorizes a state agency like ADE who receives federal funds to improve the education of ELL students under NCLB to make subgrants to LEAs such as Ascending Roots.<sup>29</sup> The state agency must require a plan from the subgrantee regarding expenditure of the funds<sup>30</sup> and is responsible for monitoring the subgrantee's compliance with the plan.<sup>31</sup>

8. Ms. White declined to testify on behalf of Ascending Roots during the hearing but suggested in closing argument that Ascending Roots did not have any ELL students. The Board presented no documentary evidence that Ascending Roots in fact had received NCLB funds for ELL students for the 2005-2006 school year. But the Board did have admitted into evidence three letters and two e-mails from ADE to Ascending Roots, requesting copies of its procedures for identifying and assessing ELL students that were needed to justify the NCLB funds it had received for the 2005-2006 school and to ensure that it continued to receive such funds in the 2006-2007 school

<sup>28</sup> BLACK'S LAW DICTIONARY at page 1220 (8<sup>th</sup> ed. 1999).

<sup>29</sup> See 20 U.S.C. § 6825.

<sup>30</sup> See 20 U.S.C. § 6826.

1 year. Ascending Roots did not offer into evidence any responsive correspondence,  
2 either protesting that it had not received NCLB funds for ELL students during the 2005-  
3 2006 school year or providing procedures for identifying and assessing such students.

4 9. The Board therefore also has sustained its burden to prove that Ascending  
5 Roots violated federal statute and regulation and the Charter Contract regarding its  
6 NCLB funds for ELL students by submitting a Cycle 6 packet that adequately identified  
7 its procedures for identifying such students and measuring their progress.

8 10. Mr. O'Bannon thought that Ascending Roots had used Odyssey Ware during  
9 the 2007-2008 school year, to supplement the SRA materials. Ms. White stated in her  
10 closing argument that Ascending Roots possessed a receipt for the Odyssey Ware that it  
11 had purchased for the 2007-2008 year. But Ascending Roots' Odyssey Ware sales  
12 representative told Ms. Rowe that it had not purchased the Odyssey Ware. Despite Ms.  
13 Rowe's specific request for the receipt on June 6, 2008, Ascending Roots did not produce  
14 it, either at the time or at the hearing. Neither one of Ascending Roots' witnesses on this  
15 issue possessed first hand-knowledge of its social studies and science curriculum.  
16 Neither could testify that such curriculums were in alignment with the Standards for each  
17 grade level during the 2007-2008 school year or that students at Ascending Roots  
18 actually were instructed according to such curriculums.

19 11. The Board therefore also has sustained its burden to prove that Ascending  
20 Roots violated both Arizona statute and the Charter Contract by failing to provide a  
21 curriculum in science and social studies that was aligned with the Arizona Academic  
22 Standards.

23 12. With respect to the penalty, A.R.S. § 15-183 does specify the circumstances  
24 under which revocation of a charter should occur but only states that the sponsor "may  
25 revoke a charter at any time if the charter school breaches one or more provisions of its  
26 charter."<sup>32</sup> The statute requires that the sponsor "shall allow the charter school at least  
27 ninety days to correct the problems associated with the reasons for the proposed  
28 revocation of the charter," which occurred in this case, but that "[t]he final determination  
29

30 <sup>31</sup> See 34 C.F.R. § 80.40(a).

<sup>32</sup> See A.R.S. § 15-183(l) (emphasis added).

1 of whether to revoke the charter shall be made at a public hearing called for such  
2 purpose.<sup>33</sup>

3 13. Ascending Roots had 90 days from the date of the Board's Notice of Intent to  
4 Revoke Charter, or until June 9, 2008, within which to cure the deficiencies set forth in  
5 that Notice. Ascending Roots cured two deficiencies during this time: it obtained a  
6 valid fingerprint clearance card for the teacher/ instructional aid and provided an annual  
7 financial audit and completed compliance questionnaire for the 2006-2007 school year.

8 14. Ascending Roots' failure to provide the minimum hours of instruction to its  
9 seventh and eighth grade students evidences a lack of accountability, and deprived  
10 those students of hours of education to which they were lawfully entitled.

11 15. Ascending Roots' failure to provide a curriculum aligned with the Standards  
12 in social studies and science demonstrates either an inability or unwillingness by  
13 Ascending Roots to comport with statewide educational requirements. If any of  
14 Ascending Roots' students transfers to another school, the student's knowledge will be  
15 deficient, compared to his or her new classmates.

16 16. Ascending Roots' repeated attempts to revise the bell schedule, without ever  
17 providing the requisite instruction hours, is considered as a factor in aggravation.  
18 Likewise, its various inconsistent and contradictory claims about its course of instruction  
19 are considered as a factor in aggravation. Ascending Roots apparently will change its  
20 story as many times as is necessary to claim compliance with applicable statutes and  
21 regulations. It appears that Ascending Roots may not be capable of actual compliance.

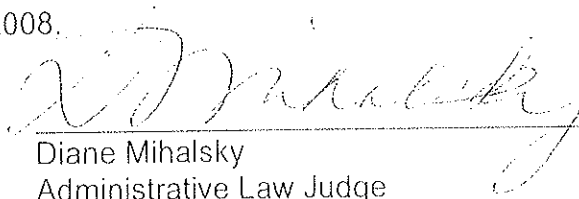
22 17. In light of the scope and nature of Ascending Roots' violations, and the fact  
23 that Ascending Roots failed to remedy those deficiencies within the statutorily-  
24 prescribed cure period, the Administrative Law Judge concludes that Ascending Roots'  
25 Charter should be revoked. Ascending Roots' current efforts are too late and, in any  
26 even, insufficient to warrant further reprieve.

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28  
29  
30 <sup>33</sup> See *id.* (emphasis added).

RECOMMENDED ORDER

For the foregoing reasons, the Administrative Law Judge recommends that the Charter Contract between the Board and Ascending Roots Scholastic and Athletic Premise, Inc. be revoked.

Done this day, July 28, 2008.

  
Diane Mihalsky  
Administrative Law Judge

Original transmitted by mail this  
28 day of July, 2008, to:

Arizona State Board for Charter Schools  
DeAnna Rowe, Executive Director  
State Board for Charter Schools  
1700 W. Washington St.  
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By \_\_\_\_\_